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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-45

In the Matter of:

Federal-State Joint Board on
Universal Service)
)
)
)**COMMENTS OF GTE**

GTE Service Corporation and its affiliated domestic communications companies¹ ("GTE") respectfully submit their Comments regarding requests for confidential treatment of wire center line count data in the above-captioned docket.² Disclosure of line count data at the level of particular wire center code would reveal proprietary business information that would cause competitive harm to GTE. This information is therefore exempt from public disclosure under the Freedom of Information Act ("FOIA"). Moreover, there is no compelling public interest in disclosing the line count data for wire centers that do not receive universal service support. Therefore, GTE urges the Commission to afford such data confidential treatment.

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc.

² See *Common Carrier Bureau Seeks Comment on Request for Confidential Treatment of Wire Center Line Count Data*, Public Notice, CC Docket No. 96-45, DA 00-1068 (May 12, 2000).

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II. WIRE CENTER LINE COUNT DATA MEETS THE FOIA STANDARD.

Pursuant to the Commission's rules and its *Ninth Report and Order* and *Nineteenth Order on Reconsideration*, GTE submits line count data for each of its individual wire center to the National Exchange Carrier Association ("NECA") on a quarterly basis.³ Several non-rural carriers, including GTE, have requested confidential treatment of these quarterly line count data.⁴ The Commission declined to grant these requests for the data on wire centers that receive support from the Commission's high-cost universal service support mechanism.⁵ The Commission now seeks comment on whether the line count data for wire centers that do not receive universal service support should be afforded confidential treatment.

Under exemption four of FOIA, commercial or financial information that is submitted to the government on a mandatory basis is confidential when disclosure is likely "to cause substantial harm to the competitive position of the

³ See 47 C.F.R. § 36.611; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, ¶ 92, n.248 (1999); *Nineteenth Order on Reconsideration*, FCC 99-396, ¶ 9 (rel. Dec. 17, 1999).

⁴ See Letter from Gail L. Polivy, Assistant General Counsel, GTE Service Corporation, to Magalie R. Salas, FCC Secretary (filed Jan. 13, 2000).

⁵ See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, FCC 00-125 (rel. Apr. 7, 2000). GTE continues to disagree with the Commission's decision to disclose to the public the line count data by wire centers receiving universal service support.

person from whom the information was obtained.”⁶ The line count information GTE submitted to NECA contains commercial information that meets this standard and the requirements of section 0.457(d) of the Commission’s rules⁷ because of the competitive advantage that it could provide to business rivals.

Disclosure of line counts at the level of particular wire center code would reveal proprietary business information that would cause competitive harm to GTE. The data submitted contains detailed information on GTE’s facilities, including highly sensitive information such as customer growth rates,⁸ used in GTE’s business plans. Competitors or potential competitors could use the data to evaluate operational and business plans. They also could use this intelligence to target construction of facilities and marketing to areas with the highest concentration of customers. Disclosure of this information would undermine GTE’s business interests and would have a significant, long-term negative impact on the ability of GTE to compete effectively.

The Commission previously has recognized the proprietary nature of wire center-specific line count data and has treated similar data submissions as

⁶ See *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

⁷ 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

⁸ Competitors could use the data to determine growth and market trends for specific exchanges and classes of services over time. Any trends discerned from this data would reflect the combined effect of changes in GTE’s market share and changes in overall market size.

confidential and protected from public disclosure.⁹ By allowing parties to claim confidentiality when they submit line count data, the Commission has also acknowledged that such information likely meets the FOIA standard for commercial information.¹⁰

Furthermore, line count data at the wire center level generally are not publicly available from other sources. As competition continues to increase, GTE now routinely asserts confidentiality when submitting this information to state commissions and does not make it publicly available unless ordered to do so. While some state commissions have ordered such disclosure, many others have treated it as confidential. In addition, even those states that previously directed disclosure have recognized that the sensitivity of this information will increase as competition grows.¹¹ Therefore, the Commission should take a forward-looking approach that shields these data from disclosure to competitors.

⁹ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-160, DA 99-1406, ¶ 8, (rel. July 19, 1999).

¹⁰ See *Local Competition and Broadband Reporting*, Report and Order, CC Docket No. 99-301, FCC 00-114, ¶ 89 (rel. Mar. 30, 2000).

¹¹ *Resolution of GTE Florida Incorporated's January 31, 1997, Request for Confidential Classification Regarding Quarterly Report Schedule 8*, Order Denying Request For Confidentiality, Florida Public Service Commission Docket No. 970226-TL, Order No. PSC-97-0633-CFO-TL (1997) ("In determining whether or not the data should be classified as confidential, the real question is when will competitive conditions warrant confidential classification. . . . The time will come when all participants in a competitive marketplace must treat this information in a proprietary manner.").

III. THERE IS NO COMPELLING PUBLIC INTEREST IN DISCLOSING THE WIRE CENTER LINE COUNT DATA.

These substantial reasons for maintaining the confidentiality of the line count data by wire center are not trumped by a compelling public interest for disclosure. Unlike the line count data for wire centers that receive universal service support, absolutely no benefit to the universal service program or goals would result from disclosing this information.¹² Moreover, no other public interest purpose would be served by disclosing this information. GTE's competitors are the only parties who would receive any benefit from public disclosure.

¹² See *supra* note 5, ¶ 15 ("We conclude that the public availability of per-line support amounts in individual wire centers is essential to any competitively neutral universal service support mechanism that provides portable support to any eligible telecommunications carrier.").

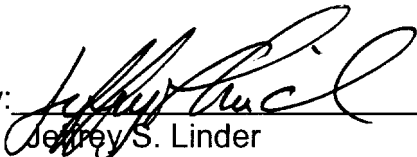
IV. CONCLUSION

GTE's line count data for wire centers not receiving universal service support constitute commercial information exempt from public disclosure under FOIA because disclosure would result in substantial competitive harm to GTE. Moreover, there is no compelling public interest in disclosure of this information. Therefore, GTE urges the Commission to keep this line count data confidential.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 26th day of June, 2000, I caused copies of the foregoing Reply of GTE to be sent via hand-delivery to:

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